

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1378 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRABHAVATIBEN L GAJJAR

Versus

STATE OF GUJARAT

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Appearance:

MR PV NANAVATI for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE N.N.MATHUR

Date of decision: 10/10/96

ORAL JUDGEMENT

The appellants, original claimants have preferred this appeal against the award dated 29.11.1983 made by the Extra Asstt. Judge, Ahmedabad (Rural) at Narol, who partly allowed the reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and awarded an additional compensation of Rs.

80,253.90 inclusive of running interest at the rate of 4 1/2% on the awarded amount from the date of taking over possession of the land till realisation of the amount.

2. The claimants in the reference application claimed compensation @ Rs.40/- per sq.metre. The agricultural land admeasuring 23,262 sq.mts. came to be acquired for the purpose of Narmada Vasahat Yojna within the limits of town Sanand. Notification under section 4 of the Act was published on 16.7.1981. The Land Acquisition Officer awarded compensation at the rate of Rs.17/- per sq.metre, giving compensation of Rs.3,95,454/- and Rs.59,318.10 towards solatium, in all Rs.4,54,772.10.

3. The claimants, before the reference Court, led evidence by examining four witnesses and by producing sale instances submitted that the claim as made should be accepted. In para 8 of the impugned award, various sale instances are quoted. The learned Judge after considering the sale instances held that the prevailing market rate can be said to be between Rs. 22/- to Rs.24/- per sq.metre. However, in para 10 while awarding compensation, the trial court held that the fair compensation should be calculated @ Rs.20/- per sq. metre.

4. Mr Nanavati, learned Advocate appearing for the claimants submitted that the learned Judge has, in para 9 and 10 of the judgment, pointed out the utility of the land and the surrounding area, and yet has committed an error in coming to the conclusion that Rs.20/- per sq. metre would be the fair market value. The trial court has observed that "it should be remembered that the Court has to consider the valuation which a willing purchaser would pay to a willing seller". Mr Nanavati submitted that the sale instances which are indicated in the award clearly show that the price was in the vicinity of Rs.30/- per sq. metre and yet the Court has awarded Rs.20/- per sq.metre only. The reason given by the learned Judge is that the sale instances of Cooperative Housing Societies cannot be accepted to be the basis for fixing adequate compensation though the learned Judge has further observed that keeping those rates in mind, adequate compensation can be fixed. If the land is in the town itself and as indicated in para 10 of the impugned award nearby the lands in question, there are Cooperative Housing Societies, industrial houses, Government Offices and the land is touching the Highway, the Court ought to have considered these factors in their proper perspectives. It is also required to be noted

that the land is also fertile as the claimants were taking tobacco crops every year yielding a net profit of Rs.25,000/- per year. The learned Judge has also observed that had this land not been acquired, it would have been used for non-agricultural purposes and it would have perhaps fetched more profit than what the claimants have claimed by way of compensation under the award of the Land Acquisition Officer. It is required to be noted that merely because the State can acquire land, it does not mean that the land owners should not be paid market price or the fair price. Had it been the case of acquiring a very vast area, the matter would have been different. In the instant case, it is clear that the land admeasuring 23262 sq.mts. which is acquired is situated touching the border of Sanand Nagar Palika. Around the land, other lands are occupied by the Cooperative Housing Societies or industrial houses. Opposite to the plot, there are Government Offices. Over and above, this land is situated on the Highway. It is also required to be noted that Sanand town is situated about 20 km. from Ahmedabad. The learned Judge has also taken note that the price of the land is rising tremendously and the Court cannot ignore such price rising, and the decreasing value of a rupee. It is also clear that water facility, electricity, telephone, railway, Post & Telegraphs and other facilities are available. There were about 10 to 12 existing factories and many other factories were at the relevant time under construction. Considering all these aspects, we think that the learned Judge has committed an error in coming to the conclusion that the compensation should be calculated @ Rs.20/- per sq. metre. The Learned Judge has come to the conclusion in para 8 of the judgment that considering the sale instances of the year 1981, which is relevant year when the notification under section 4 was issued, the prevailing market rate was between Rs.22/- to Rs.24/- per sq. metre. It is also indicated that there are instances indicating that the price in the vicinity was even higher at the relevant time. Considering the aforesaid aspects, it would be just and proper to award Rs.23/- per sq. metre. In view of what we have stated hereinabove, the opponent is hereby ordered to pay Rs.3/per sq.mtr. by way of additional compensation to the claimants over and above the amount awarded to the claimants by the Special Land Acquisition Officer and the learned Extra Asstt.Judge exercising powers under section 18 of the Act.

5. The award in question is dated 29.9.1982. The Court decided the reference under section 18 of the Act on 29.11.1983. Keeping these dates in mind, Mr Nanavati,

learned Advocate submits that solatium @ 30% under sub-section (2) of S. 23 of the Act should be awarded and not at the rate of 15% as awarded by the reference court. Sub-sec. (2) of S.23 of the Act reads as under:

"23. Matters to be considered in determining compensation.

(1) x x x x

(2) In addition to the market value of land, as above provided, the Court shall in every case award a sum of (thirty per centum) on such market value in consideration of the compulsory nature of acquisition."

It is clear that the proceedings came to be terminated into award of the Collector and by the reference Court between 30.4.1982 and 24.9.1984. Therefore, the Land Acquisition (Amendment) Act, 1984, (Act No.68 of 1984) is required to be considered. The said Act received assent of the President on 24th September, 1984. Section 30 of that Act is a transitional provision and Sub-section (2) of section 30 reads as under:

"30. Transitional provisions..- (1) x x x x

(2) The provisions of sub-section (2) of Sec. 23 and Sec. 28 of the principal Act, as amended by Cl.(b) of Sec.15 and Sec.18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 and before the commencement of this Act. "

Mr Nanavati submitted that in view of the decision of the Apex Court in the case of Union of India vs. Raghuvir Singh, reported in AIR 1989 SC 1933, the claimants are entitled to the benefit of the aforesaid provision, and thus would be entitled to get an additional amount of 30% on the market value in consideration of the compulsory acquisition. In view of the said provision, the claimants would be entitled to get the benefit of sub-section (2) of section 23 of the Act and accordingly the claimants shall be paid the amount. Thus the appellants are entitled to get difference of 15% of solatium on the amount received and solatium @ of 30% on

the amount awarded in addition to what is awarded.

6. Mr Nanavati further contended that so far as the rate of interest is concerned, 9% interest for the period of one year and thereafter at the rate of 15% till the payment is made be awarded in view of section 28 of the Act. The said section reads as under:

"28. Collector may be directed to pay interest on excess compensation - If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

"(Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry)"

The Court below awarded interest at the rate of 4 1/2% per annum but in view of section 28 of the Act, interest is to be paid @ 9% per annum from the date on which possession is taken and @ 15% per annum after the expiry of a period of one year from the date on which possession is taken till the amount is paid or deposited in the Court. Learned Advocate submitted that the respondent is liable to pay interest as aforesaid on the amount which the claimant is entitled to get. Considering section 28 of the Act, we direct the respondent to pay interest as per section 28 of the Act. As this Court is of the opinion that the amount of compensation should have been paid @ Rs.23/- per sq. metre, and solatium as aforesaid, in view of section 28 of the Act on the total amount of compensation payable which is in excess of the amount of compensation which the Collector awarded as compensation, the Collector shall pay on such excess amount interest 9% per annum according to the provisions of section 28 of the Act. Further, on the excess amount, the Collector shall pay to the claimants, interest @ 15% per annum on

such excess amount in view of the provisions contained in the proviso to section 28 of the Act for the period after the expiry of one year, after taking possession of the land in question. The Appeal stands allowed accordingly with no order as to costs.

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